



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/158038

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 02, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on August 26, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner was overissued FoodShare benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Nadine Stankey

Public Assistance Collection Unit  
P.O. Box 8939  
Madison, WI 53708-8938

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a FoodShare Overpayment Notice dated June 2, 2014 that informed Petitioner that she had a FoodShare in the amount of \$593.18 for the period from July 2012 through October 2012 as a result of trafficking or misuse of her FoodShare benefits as an intentional program violation.
3. The Office of the Inspector General for the Department of Health Services filed a petition with the Division of Hearings and Appeals on January 14, 2014 seeking to disqualify Petitioner herein from receipt of FoodShare benefits for one year for trafficking in those FoodShare benefits. A hearing was conducted on March 12, 2014 by the Division of Hearings and Appeals. Petitioner did not appear for that hearing but, as required by federal law, the hearing was conducted and a

decision issued on April 17, 2014 that found that Petitioner had trafficked her FoodShare benefits and imposed a one-year disqualification of Petitioner from the FoodShare program. (DHA case number FOF – 154691.)

4. Petitioner herein did not appeal the Division of Hearings and Appeals decision in case number FOF – 154691.
5. Petitioner does continue to receive FoodShare benefits for other members of her household.
6. The \$593.18 overpayment alleged here consists of purchases made during the time period here at [REDACTED]; a store that was disqualified by the United States Department of Agriculture's Food and Nutrition service for trafficking in FoodShare benefits. See record in FOF-154691.

### **DISCUSSION**

The Department is required to recover all overpayments of FoodShare benefits. The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). *7 Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2. The agency is to establish an overpayment claim where there is an IPV:

#### 7.3.2.4 IPV

Establish a claim due to an Intentional Program Violation only when one of these conditions exists. The food unit member:

1. Signs a waiver of the disqualification hearing, or
2. Signs a disqualification consent agreement after being referred for prosecution, or
3. Is convicted of a FS felony or found guilty of IPV in an Administrative Disqualification Hearing or judicial proceeding.

Conduct which may lead to an IPV determination for an individual include:

1. Making false or misleading statements or misrepresenting, concealing or withholding facts to become eligible or to remain eligible for benefits, or
2. Committing any act that constitutes a violation of FoodShare regulations or state statutes relating to the use, presentation, transfer, acquisition, receipt or possession of FS, i.e., trafficking FS.

...

*FSH*, §7.3.2.4.

In this case there is already been a hearing decision issued which found that Petitioner made purchases in the amount of \$593.18 at the store that was disqualified by the Food and Nutrition Service for trafficking in FoodShare benefits. Though the amount of purchases made at [REDACTED] were not an issue in the earlier hearing, the decision from that hearing did conclude that Petitioner had made purchases that were trafficking purchases and that hearing record shows that the amount was \$593.18. I do, therefore, conclude that Petitioner was overissued FoodShare in the amount of \$593.18 and that the agency may proceed to collect that overissuance.

Finally, the following gives Petitioner an idea as to how the overissuance is collected:

#### **7.3.2.12 Repayments**

A client who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a client has received three dunning notices, s/he is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

*FSH*, §7.3.1.12.

**CONCLUSIONS OF LAW**

That Petitioner was overissued FoodShare in the amount of \$593.18.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 16th day of September, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 16, 2014.

Public Assistance Collection Unit  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability